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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

11 THOMAS DALTON,

Case No. C 10-05305 PJH (LB)

12 Plaintiff,

**[PROPOSED] ORDER AMENDING  
DEFENDANT AMERICAN SUBSTANCE  
ABUSE PROFESSIONALS, INC.'s  
ANSWER TO ADD AFFIRMATIVE  
DEFENSES**

13 vs.

14 UNITED PARCEL SERVICE, an Ohio  
corporation; AMERICAN SUBSTANCE  
15 ABUSE PROFESSIONALS, INC., a Maryland  
corporation; JERRY MATTES, an individual;  
16 MARY SUE ALLEN, an individual; HAIDEE  
LAGUNDAY, an individual; and DOES 1  
17 through 50, inclusive,

18 Defendants.

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1       Based upon the parties' stipulation and pursuant to Federal Rule of Civil Procedure  
2 15(a)(2), the Court HEREBY ORDERS that Defendant American Substance Abuse Professionals,  
3 Inc.'s Answer to First Amended Complaint for Damages, attached hereto as Exhibit A, is  
4 HEREBY AMENDED to include the following additional defenses.

5 In asserting these defenses, ASAP does not assume the burden of proof as to matters that,  
6 as a matter of law, are Plaintiff's burden to prove.

## **TWENTIETH AFFIRMATIVE DEFENSE**

8 The first and tenth purported causes of action are barred because any alleged invasion of  
9 Plaintiff's privacy by Defendant ASAP was justified by one or more countervailing interests.

## **TWENTY-FIRST AFFIRMATIVE DEFENSE**

11 Plaintiff's tenth purported cause of action under California Business and Professions Code  
12 section 17200 *et seq.* is barred because it is duplicative of all other purported causes of action, and  
13 Plaintiff has an adequate remedy at law.

## **TWENTY-SECOND AFFIRMATIVE DEFENSE**

15 Plaintiff's tenth purported cause of action under California Business and Professions Code  
16 section 17200 *et seq.* is barred because California Business and Professions Code section 17200 *et*  
17 *seq.*, as stated and as sought to be applied by Plaintiff, violate Defendant ASAP's rights under the  
18 United States Constitution and the California Constitution in that, among other things, they are  
19 void for vagueness, violative of equal protection, violative of due process, an undue burden on  
20 interstate commerce, and violative of the freedom of contract.

## **TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate or reasonably attempt to mitigate his damages, if any, as required by law.

## **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover any punitive or exemplary damages as prayed for in the First Amended Complaint, and any allegations with respect thereto should be stricken, because:

27 (a) Plaintiff has failed to plead facts sufficient to support allegations of oppression,  
28 fraud, and/or malice. *See* Cal. Civ. Code § 3294(a); and/or

1                             (b) Plaintiff has failed to plead facts sufficient to support allegations of willful  
 2 and/or conscious disregard of the rights of Plaintiff or that Defendant ASAP was motivated  
 3 by evil motive or intent; and/or

4                             (c) Neither Defendant ASAP nor any officer, director, or managing agent of  
 5 Defendant ASAP committed any alleged oppressive, fraudulent, false, deceptive, or  
 6 malicious act, authorized or ratified such an act, or had advance knowledge of the  
 7 unfitness, if any, of any employee, agent or representative who allegedly committed such  
 8 an act, or employed, retained or directed any such employee, agent or representative with a  
 9 conscious disregard of the rights or safety of others. *See* Cal. Civ. Code § 3294(b).

10                             **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

11 Plaintiff is not entitled to recover any punitive or exemplary damages as prayed for in the  
 12 First Amended Complaint, and any allegations with respect thereto should be stricken, because  
 13 California's laws regarding the alleged conduct in question in this action are too vague to permit  
 14 the imposition of punitive damages, and because any award of punitive or exemplary damages  
 15 under California law in general, and/or any such award under California law as applied to the facts  
 16 in this case, would violate Defendant ASAP's constitutional rights under provisions of the United  
 17 States and California Constitutions, including, but not limited to, the due process clauses of the  
 18 Fifth and Fourteenth Amendments to the United States Constitution, and the excessive fines and  
 19 cruel and unusual punishment clauses of the Eighth Amendment to the United States Constitution.

20                             **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

21 Plaintiff's first and tenth causes of action fail because Plaintiff signed a valid release,  
 22 thereby extinguishing his rights to bring the claims asserted herein.

23                             PURSUANT TO STIPULATION, IT IS SO ORDERED

25 Date: 6/16/11

26 Signed: \_\_\_\_\_

27                             The Honorable Phyllis J. Hamilton



28                             Case No. C 10-05305 PJH (LB)  
 29 [PROPOSED] ORDER AMENDING ASAP'S  
 30 ANSWER

**EXHIBIT A**

1 ALLEN MATKINS LECK GAMBLE  
2 MALLORY & NATSIS LLP  
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ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 19 2010

CLERK OF THE SUPERIOR COURT  
By Barbara LaMotte  
Deputy

7 Attorneys for Defendant  
8 AMERICAN SUBSTANCE ABUSE  
9 PROFESSIONALS, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ALAMEDA

12  
13 THOMAS DALTON,

14 Plaintiff,

15 vs.

16 UNITED PARCEL SERVICE, an Ohio  
corporation; AMERICAN SUBSTANCE  
17 ABUSE PROFESSIONALS, INC., a  
Maryland corporation; JERRY MATTES,  
18 an individual; MARY SUE ALLEN, an  
individual; HAIDEE LAGUNDAY, an  
individual; and DOES 1 through 50,  
inclusive,

20 Defendants.

21 Case No. RG10532370

22 [Assigned to Judge Hon. Wynne Carvill,  
Dept. 21]

23 AMERICAN SUBSTANCE ABUSE  
PROFESSIONALS, INC.'S ANSWER TO  
FIRST AMENDED COMPLAINT FOR  
DAMAGES

24  
25 Defendant American Substance Abuse Professionals, Inc. ("ASAP") answers the  
First Amended Complaint for Damages of Thomas Dalton ("Complaint") as follows:

**GENERAL DENIAL**

26 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, ASAP  
files this general denial to Plaintiff's unverified Complaint, and answering each and all of  
27 its allegations, ASAP denies generally and specifically each and every allegation contained  
in the Complaint. ASAP further denies, generally and specifically, that Plaintiff has been

1 damaged in any sum, or at all, by reason of any act or omission on the part of ASAP or on  
2 the part of any of ASAP's agents, servants or employees.

3 In addition, ASAP asserts the following additional defenses. In asserting these  
4 defenses, ASAP does not assume the burden of proof as to matters that, as a matter of law,  
5 are Plaintiff's burden to prove.

6 **FIRST ADDITIONAL DEFENSE**

7 The Complaint, and each purported cause of action contained therein, fails to state  
8 facts sufficient to constitute a cause of action.

9 **SECOND ADDITIONAL DEFENSE**

10 Plaintiff is estopped from pursuing the claims in the Complaint, and each purported  
11 cause of action contained therein, by reason of Plaintiff's own actions and course of  
12 conduct.

13 **THIRD ADDITIONAL DEFENSE**

14 Plaintiff has waived the right, if any, to pursue the claims in the Complaint, and  
15 each purported cause of action contained therein, by reason of Plaintiff's own actions and  
16 course of conduct.

17 **FOURTH ADDITIONAL DEFENSE**

18 The Complaint, and each alleged cause of action contained therein, is barred by the  
19 doctrines of laches, unclean hands and/or waiver.

20 **FIFTH ADDITIONAL DEFENSE**

21 The Complaint, and each alleged cause of action contained therein, is barred in  
22 whole or in part by all applicable statutes of limitation, including but not limited to, Code  
23 of Civil Procedure section 335.1 and Business and Professions Code section 17208.

24 **SIXTH ADDITIONAL DEFENSE**

25 Any and all claims by Plaintiff based in whole or in part upon any alleged physical  
26 or emotional injury or distress arising in the course and scope of employment, which was  
27 by United Parcel Service, Inc., are barred because Plaintiff's sole and exclusive remedy, if

1 any, for such injuries is governed by the California Workers' Compensation Act. Cal. Lab.  
 2 Code § 3600 et seq.

3 **SEVENTH ADDITIONAL DEFENSE**

4 Plaintiff is barred from, and has waived, any recovery for any alleged physical or  
 5 emotional injury or distress, to the extent that Plaintiff has failed to pursue and exhaust his  
 6 remedies, if any, under the California Workers' Compensation Act. Cal. Lab. Code §  
 7 3600, et seq.

8 **EIGHTH ADDITIONAL DEFENSE**

9 Plaintiff's claims are barred, in part or in whole, because, if any employee of ASAP  
 10 did any of the unlawful or tortious acts as alleged in the Complaint, he or she was acting  
 11 outside the scope of his or her employment.

12 **NINTH ADDITIONAL DEFENSE**

13 If Plaintiff sustained any loss, injury, damage or detriment as alleged in the  
 14 Complaint, the loss, injury, damage, or detriment was caused and contributed to by  
 15 Plaintiff's actions in that he did not exercise ordinary care on his own behalf and Plaintiff's  
 16 own actions and omissions proximately caused and contributed to the loss, injury, damage  
 17 or detriment alleged by Plaintiff, and Plaintiff's recovery from ASAP, if any, should be  
 18 reduced in proportion to the percentage of Plaintiff's negligence or in proportion to his  
 19 fault.

20 **TENTH ADDITIONAL DEFENSE**

21 If Plaintiff suffered any damages, such damages were proximately caused by  
 22 individuals who were not officers, directors, employees, or agents of ASAP.

23 **ELEVENTH ADDITIONAL DEFENSE**

24 Plaintiff's prayer for punitive damages is barred in full or in part by the United  
 25 States Constitution and/or the California Constitution.

26 **TWELFTH ADDITIONAL DEFENSE**

27 Plaintiff is not entitled to recover punitive damages because ASAP at all times  
 28 made a good faith effort to comply with the law, and any actions taken with respect to

1 Plaintiff were done without malice, conscious disregard or reckless indifference to his  
2 rights.

3 **THIRTEENTH ADDITIONAL DEFENSE**

4 ASAP is entitled to a setoff of any monetary damages Plaintiff recovers against  
5 ASAP herein.

6 **FOURTEENTH ADDITIONAL DEFENSE**

7 Plaintiff's alleged damages are barred or offset by the avoidable consequences  
8 doctrine.

9 **FIFTEENTH ADDITIONAL DEFENSE**

10 Plaintiff's claims are barred, in whole or in part, because his own actions and course  
11 of conduct constitute consent to the acts alleged in the Complaint.

12 **SIXTEENTH ADDITIONAL DEFENSE**

13 Plaintiff's claim is barred, in whole or in part, because he consented to the conduct  
14 alleged in the complaint by signing the Employee Alcohol and/or Drug Rehabilitation  
15 Agreement, Statement of Understanding, Testing Notification Forms, Breath Alcohol  
16 Testing Forms, and Authorizations for Release of Protected Health Information.

17 **SEVENTEENTH ADDITIONAL DEFENSE**

18 The Complaint, and each and every purported cause of action alleged therein, is  
19 barred because any recovery from ASAP would result in Plaintiff's unjust enrichment.

20 **EIGHTEENTH ADDITIONAL DEFENSE**

21 ASAP intends to rely upon and hereby asserts any defense asserted by other named  
22 Defendants, or upon the defenses hereafter asserted by any other presently unnamed  
23 defendant who later asserts defenses in this action.

24 **NINETEENTH ADDITIONAL DEFENSE**

25 The Complaint does not describe its claims or events with sufficient particularity to  
26 allow ASAP to ascertain what other defenses may exist, and ASAP therefore reserves the  
27 right to assert additional defenses once it determines the precise nature of Plaintiff's claims  
28 and it discovers that such additional defenses may be appropriate.

1 WHEREFORE, ASAP prays for judgment as follows:

- 2 1. That Plaintiff take nothing by reason of his Complaint, that the Complaint be  
3 dismissed in its entirety with prejudice, and that judgment be entered for ASAP;  
4 2. That ASAP be awarded its reasonable costs and attorneys' fees; and  
5 3. That ASAP be awarded such other and further relief as the Court deems just  
6 and proper.

7 Dated: October 19, 2010

8 ALLEN MATKINS LECK GAMBLE  
9 MALLORY & NATSIS LLP

10 By: 

11 ANNETTE M. RITTMULLER  
12 Attorneys for Defendant  
13 AMERICAN SUBSTANCE ABUSE  
14 PROFESSIONALS, INC.  
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